

## SAVEOLOGYNETWORK® AFFILIATE MARKETING PROGRAM

### AFFILIATE AGREEMENT

This Affiliate Agreement ("**Agreement**") is made and entered into by and between **SaveologyNetwork, LLC**, a Florida limited liability company with offices at 3303 W. Commercial Blvd, 2<sup>nd</sup> Floor, Ft. Lauderdale FL 33309 ("**Saveology**" or "**We**") and **you** ("**Affiliate**" or "**You**" or "**Your**"). As used herein, *Agreement* shall mean this agreement, the Service Provider Addendum (as hereinafter defined) as well as all related exhibits, amendments, policies and procedures.

***PLEASE READ THIS AFFILIATE AGREEMENT ("AGREEMENT") CAREFULLY. BY CLICKING ON THE "ACCEPT" BUTTON YOU ARE SIGNIFYING YOUR AGREEMENT TO BE PRESENTLY BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT TO THE SAME EXTENT AS IF YOU HAD SIGNED THE AGREEMENT PERSONALLY. IF YOU DO NOT ACCEPT THE TERMS AND CONDITIONS OF THIS AGREEMENT, DO NOT CLICK ON THE "ACCEPT" BUTTON TO APPLY FOR THE PROGRAM. BY ENTERING INTO THIS AGREEMENT YOU REPRESENT THAT YOU ARE EIGHTEEN (18) YEARS OF AGE OR OLDER AND LAWFULLY ABLE TO ENTER INTO LEGALLY BINDING AGREEMENTS. IF YOU ARE SIGNING THIS AGREEMENT ON BEHALF OF A COMPANY OR ENTITY, YOU HEREBY REPRESENT THAT YOU HAVE AUTHORITY TO BIND THAT COMPANY TO THESE TERMS AND CONDITIONS.***

1. **Program Overview.** Through the Saveology.com website, Saveology offers consumers a powerful comparison shopping platform through which they can lower their cost of living by quickly comparing offers and purchasing home services. The purpose of the Agreement is to set forth the terms and conditions of your participation in the Saveology Network Affiliate Program (the "Program") through which you will market and sell the Services.
2. **Defined Terms.**
  - a) "**Affiliate Site**" means any web site owned and/or operated by You and identified in your Program Application that You will link to the Program Site(s) in accordance with the terms and conditions of this Agreement.
  - b) "**Approved Links**" means those link formats provided or designated by Saveology that Saveology provides to You hereunder to link websites and emails owned or controlled by You to the Program Sites.
  - c) "**Commission(s)**" means the payments made to Affiliate by Saveology for Referral Sales as hereinafter defined, according to the Commissions schedule ("**Commissions Schedule**") included in the Service Provider Addendum.
  - d) "**Content**" means any Approved Links, banners, email templates, landing pages and other content elements that Saveology may provide to Affiliate to be used in connection with the advertising and marketing of the Services.
  - e) "**Customers**" means, with respect to the Services, a person or entity that purchases the Services through Saveology.
  - f) "**Privacy Policy**" means the privacy policy posted on an Affiliate Site.

- g) “*Program Site(s)*” shall mean saveologynetwork.com (the “Saveology Site”), and any web site(s) affiliated with Saveology, the Saveology Affiliated Companies and/or the Service Providers that Saveology has designated as part of the Program, and/or any successor web site(s) thereto.
- h) “*Referral Sales*” shall mean sales of Services to Customers by Saveology as a result of a lead or referral from Affiliate.
- i) “*Saveology Affiliated Company*” means any branch or entity controlling, controlled by or under common control with Saveology, whether now existing or formed in the future, together with any branch or entity that may acquire such status in the future.
- j) “*Services*” means those products or services that are offered to consumers via the Program Sites.
- k) “*Service Provider Addendum*” means that certain addendum to this Agreement executed by Saveology and Affiliate that sets forth the Services that Affiliate is authorized to promote and sell under this Agreement, the Commission Level, as well as any additional terms and conditions imposed by the applicable Service Provider that apply to the Services listed therein. In the event of a conflict between the terms of this Agreement and the terms of the Service Provider Addendum, the terms of the Service Provider Addendum shall prevail.
- l) “*Service Providers*” means the service providers who provide the Services that are promoted and sold via the Program Sites.
- m) “*Tracking Mechanisms*” means those promotional codes, affiliate codes, Approved Links and toll-free telephone numbers that Saveology provides to Affiliates to track Referral Sales in order to calculate Commissions.

### **3. Affiliate Enrollment and Appointment.**

- a) Enrollment. In order to enroll in the Program, You must: (i) indicate your acceptance of the terms and conditions of this Agreement in the manner specified above, and (ii) complete and submit the on-line application (the “Application”) that is provided to You upon your acceptance of this Agreement. Your enrollment in the Program is subject to (i) Saveology’s review and approval (“Approval”) of your Application. If Approval is granted, Saveology will provide written notice (the “Approval Notice”) via email to the address You specify in the Application. Approval may be withheld or withdrawn by Saveology in its sole discretion at any time. The following persons are prohibited from participating in the Program: (a) employees of Saveology or Saveology Network, (b) independent contractors hired by Saveology or Affiliated Company, and (c) members of the immediate families of any of the individuals described in clause (a) or clause (b).
- b) Appointment and Limited License. Upon Approval and subject to the terms and conditions set forth in this Agreement as modified from time to time, Saveology hereby appoints You to diligently market, promote and sell the Services listed on the Services Addendum as a non-exclusive, independent sales agent. Solely for the limited purpose of marketing, promoting and selling the Services, Saveology grants You a limited, non-exclusive, non-assignable, non-transferable, and revocable right and license to copy and display the Content (i) on the Affiliate Sites; (ii) in e-mails sent via subscription e-mail services owned and operated by You, and (iii) in print advertisements and marketing materials in order to direct potential Customers to the Program Sites. Saveology also grants you a limited license to use the Approved Links to link the Affiliate Sites to the Program Sites.
- c) User Name and Password. When You enroll in the Program, You will select a user name and password in order to access the Content and the SaveologyNetwork Proprietary On-line Tracking

System. Keep Your user name and password confidential and do not disclose them to third parties. You will be responsible for all activity that occurs under Your password, including any damages resulting from the unauthorized use of Your password, and must notify Saveology immediately of any unauthorized use of Your password or if You believe that Your password is no longer confidential.

- d) Tax Information. Unless not required by applicable law, Affiliate must correctly complete, sign and submit to Saveology, an IRS Form W-9. If Affiliate fails to timely comply with this paragraph, Saveology will withhold payment of Commissions until Affiliate has done so. Affiliate shall be responsible to ensure its compliance with all applicable tax and legal obligations that arise from its participation in the Program.
- e) Expenses. Affiliate is solely responsible for any and all marketing, advertising and other expenses incurred in connection with the exercise of the rights granted to Affiliate hereunder.
- f) Reservation of Rights. Except as expressly provided hereunder, Saveology does not convey any intellectual property rights to Affiliate. For this purpose, intellectual property rights shall mean the intangible legal rights or interests in the Content, the Trademarks (as hereinafter defined) and the Program Sites, evidenced by or embodied in (1) any idea, design, concept, technique, invention, discovery, or improvement, regardless of patentability, but including patents, patent applications, trade secrets, and know-how; (2) any work of authorship, whether or not entitled to copyright protection and any moral rights recognized by law; and (3) any other similar rights, in each case on a worldwide basis. Saveology reserves the right to discontinue the Program, in whole or in part including the termination of the participation by certain Service Providers at any time.

#### 4. Affiliate Site(s).

- a) Operation of the Affiliate Site(s). Affiliate will be solely responsible for the development, operation, and maintenance of the Affiliate Sites and for all materials that appear on any Affiliate Site. Affiliate shall ensure that the Affiliate Sites comply in all respects with applicable law and this Agreement, and that (i) materials posted on the Affiliate Sites are accurate, appropriate, and do not violate or infringe upon the intellectual property or privacy rights of any third party (ii) materials posted on the Affiliate Sites are not libelous, discriminatory, defamatory, obscene or otherwise illegal; and (iii) the Affiliate Sites accurately and adequately disclose, either through a privacy policy or otherwise, how personal data is collected, used, stored and disclosed.
- b) Unsuitable Sites. Saveology may reject Your Application or terminate this Agreement immediately if it determines that an Affiliate Site (a) promotes sexually explicit materials, (b) promotes violence, (c) promotes discrimination based on race, sex, religion, nationality, disability, sexual orientation or age, (d) promotes illegal activities, (e) includes a trademark of a Service Provider, Saveology or a Saveology Affiliate, except as expressly authorized hereunder, or variations or misspellings of any of them in the site URLs, or (f) otherwise violates the intellectual property rights of any person or entity.
- c) FTC Disclosure Policy. Affiliate shall comply with the Federal Trade Commission (FTC) Guidelines Concerning the Use of Endorsements and Testimonials. All endorsements, reviews, and testimonials of Affiliate or third parties regarding the Service Provider products and services on Affiliate Sites as well as in other types of content websites (forums, blogs, microblogs and other Social Media channels) must be clearly disclosed pursuant to the FTC Guidelines. Affiliate shall include the following disclosure statement on the Affiliate Sites: “[Affiliate] is a member of the SaveologyNetwork, an affiliate marketing program whose members earn commissions by marketing the home services offered via the comparison shopping websites

owned and controlled by Savelology.com, LLC and its affiliated companies.”

**5. Tracking Mechanisms.**

- a) Tracking Mechanisms. Upon Your acceptance to the Program, Saveology will provide You with promotional codes, Affiliate codes and/or toll-free telephone numbers and Approved Links (“Tracking Mechanisms”) that You will include on the Affiliate Sites and in Your marketing materials in order to allow Saveology to track the Referral Sales generated by Your participation in the Program for the purpose of calculating Commissions pursuant to Section 6a. Affiliate (and not Saveology) shall be responsible for deployment of the Tracking Mechanisms on the Affiliate Site and in marketing materials.
- b) Excluded Referral Sales. Referral Sales shall not include orders placed for the personal or business use of Affiliate, Affiliate’s immediate family, employees, directors, officers, affiliates, or any other parties whose relationship is deemed by Saveology to constitute a self-referral by Affiliate. Commissions shall not be paid for self-referrals.
- c) Affiliate shall be responsible for any use or misuse of the Approved Links or other Tracking Mechanism, whether or not such access or use has been authorized by Affiliate and whether or not such person or entity is Affiliate’s employee or agent. Affiliate shall immediately notify Saveology of any such unauthorized use, or any other breach of security.
- d) Affiliate hereby acknowledges and agrees that the Tracking Mechanisms provided by Saveology are not error-free and that there may be Referral Sales that are not credited to Affiliate due to: (i) deliberate and/or accidental acts by Customers that disable or circumvent the Tracking Mechanisms; (ii) bugs, glitches, errors or crashes of the Tracking Mechanisms that render them unable to accurately track sales or leads for a period of time; and (iii) actions beyond the control of Saveology that cause irretrievable data loss on computers and back-up disk media that store Commission information, and that Saveology shall not be liable for any lost Commissions due to the foregoing.

**6. Commissions and Payments.**

- a) Commissions. Subject to the terms and conditions stated herein, Affiliate shall be entitled to a Commission for each Referral Sale recorded by the Tracking Mechanisms. The amount of the Commission and any additional terms and conditions shall be set forth in the Commission Schedule. Other than Commissions, Affiliate shall not have any claims to any additional payments or other amounts in connection with this Agreement or the Program. Notwithstanding anything set forth herein or in any policies to the contrary, Affiliate shall not be eligible to receive Commissions in connection with any Referral Sale (i) directly or indirectly resulting from actual or alleged fraud, misrepresentation, illegal action or any of the prohibited actions set forth in Section 12 of this Agreement, or (ii) placed for the business or personal use of Affiliate, Affiliate’s immediate family, employees, directors, affiliates, or any other parties whose relationship is deemed by Saveology to constitute a self-referral by Affiliate. If Saveology determines in its sole discretion that Affiliate has participated in any of the foregoing activities Saveology may, without limiting any other available rights and remedies, withhold the payment of Commissions payable under this Agreement and/or terminate this Agreement with immediate effect. NOTWITHSTANDING ANYTHING SET FORTH HEREIN TO THE CONTRARY, YOU ACKNOWLEDGE AND AGREE THAT: (Y) YOU MAY NOT REALIZE ANY BUSINESS, REVENUE OR OTHER ECONOMIC BENEFIT AS A RESULT OF YOUR PARTICIPATION IN THIS PROGRAM; AND (Z) NOTHING CONTAINED IN THIS AGREEMENT, IN ANY POLICIES OR ON THE PROGRAM

SITES SHALL BE CONSTRUED AS ANY GUARANTEE OF ANY MINIMUM AMOUNT OF COMMISSIONS OR ANY MINIMUM AMOUNT OF OTHER PAYMENTS, INCOME, REVENUE OR OTHER ECONOMIC BENEFIT IN ANY FORM WHATSOEVER.

- b) Amendments to Commission Schedules. Saveology may modify the Commission Schedules or supplement or amend any rules or policies regarding the calculation or payment of Commissions at any time upon written notice to Affiliate sent pursuant to Section 20b.
- c) Payment of Commissions. Commissions for Referral Sales will accrue once the Customer has (i) been approved by Saveology and the applicable Service Provider, (ii) the Customer account remains in good standing with the Service Provider for ninety (90) days following such approval; and (iii) Saveology has received payment for the applicable Referral Sale from the Service Provider.. Within thirty (30) days following the end of each calendar month and pursuant to the payment method selected by Affiliate in the Application, Saveology will pay to Affiliate the Commissions earned by Affiliate during that month, less any applicable taxes; provided, however, that if the Commissions payable to Affiliate for any given month are less than \$100 (one-hundred dollars), Saveology may withhold payment until the total Commissions owed to Affiliate exceed \$100. AFFILIATE ACKNOWLEDGES AND AGREES THAT SAVEOLOGY'S DETERMINATION OF COMMISSIONS EARNED BY AFFILIATE HEREUNDER IS FINAL, BINDING, NON-APPEALABLE, AND NOT SUBJECT TO AUDIT.
- d) **CHARGEBACKS.** IF YOU ARE PAID A COMMISSION TO WHICH YOU ARE NOT ENTITLED PURSUANT TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, SAVEOLOGY SHALL HAVE THE RIGHT TO CHARGEBACK SUCH COMMISSION TO YOU. IN ADDITION TO (AND WITHOUT LIMITATION OF) THE FOREGOING, SAVEOLOGY SHALL HAVE THE RIGHT TO CHARGEBACK ALL OR ANY PORTION OF A COMMISSION: (I) WITH RESPECT TO A PARTICULAR CUSTOMER TO WHOM A REFUND OR CREDIT IS ISSUED FOR ANY REASON; AND (II) IN CONNECTION WITH YOUR FRAUDULENT RECEIPT OF A COMMISSION. IF SAVEOLOGY DETERMINES AT ANY TIME IN ITS SOLE AND ABSOLUTE DISCRETION, THAT YOU COMMITTED FRAUD OR OTHER MISCONDUCT, SAVEOLOGY SHALL HAVE THE RIGHT TO CHARGEBACK ALL OR ANY PORTION OF THE COMMISSION(S) PAID TO YOU AND OUT-OF-POCKET EXPENSES (INCLUDING WITHOUT LIMITATION COLLECTION COSTS) INCURRED BY SAVEOLOGY AND/OR ANY SERVICE PROVIDERS, IN CONNECTION WITH SUCH FRAUD OR MISCONDUCT. THIS SECTION IS WITHOUT PREJUDICE TO ANY OTHER RIGHTS AND REMEDIES AVAILABLE TO SAVEOLOGY OR THE SERVICE PROVIDERS, WHETHER ARISING AT LAW, UNDER CONTRACT (INCLUDING WITHOUT LIMITATION THIS AGREEMENT), IN EQUITY OR OTHERWISE. THE PROVISIONS OF THIS SECTION 6D SHALL SURVIVE TERMINATION OF THIS AGREEMENT INDEFINITELY.
- e) Maintenance Fees. If during any calendar month after the conclusion of the initial ninety (90) days following Approval pursuant to Section 3a Affiliate fails to meet the monthly Referral Sales quota specified in the Services Addendum, Saveology will deduct the monthly maintenance fee then in effect (\$45.00 as of 4/5/2010) from the Commission payment for that month; provided, however, the if the deduction of the maintenance fee results in a negative balance, Saveology may suspend or terminate Affiliate's participation in the Program with immediate effect.
- f) Miscellaneous. In no event shall Saveology have any liability under this Agreement for any



Commissions not received by You as a result of an error in any way attributable to: (a) any bank or financial institution; or (b) any other person, entity or occurrence outside of Saveology's direct control. Affiliate shall not assign any payments, or the right to receive payments due to Affiliate under this Agreement. Any such assignment (whether express or by operation of law) shall be void and unenforceable.

**7. Reporting, Recordkeeping and Inspection Rights.**

- a) Records and Inspection. For the term of this Agreement and for a period of two years following its termination, Affiliate shall maintain detailed, accurate and thorough records of all transactions and activities relating to the Program, including, without limitation, all promotions of the Services. Affiliate shall make all such records available to Saveology promptly upon request.
- b) Access to Saveology Network Tracking System. Upon acceptance of the Application, Affiliate shall be granted access the Saveology Network Proprietary On-Line Tracking System in order to track and verify sales, promotions, orders generated, related commissions and anticipated payment date.

**8. Acceptable Marketing Activities.**

- a) Social Media. Saveology acknowledges and agrees that when used appropriately, social media is a powerful marketing tool. Notwithstanding the foregoing, Affiliate may only use social media, including social networking sites, blogs, chats and forums (each a "Social Media Outlet") to promote the Affiliate Sites upon prior written notice to and with the prior written consent of Saveology. Said written notice shall describe in reasonable detail the manner in which Affiliate intends to use Social Media Outlets. Affiliate shall not post Approved Links on Social Media Outlets. The use of social media by Affiliate shall comply at all times with the terms and conditions of this Agreement and the terms of use of the applicable Social Media Outlets.
- b) Email Campaigns. Any email marketing campaigns implemented by Affiliate shall only be sent to consumers who have elected to receive such emails and shall comply with all applicable laws related to email and electronic communications. Affiliate is not authorized to send emails on behalf of Saveology. The "from" line in any such email shall not contain the word "Saveology. Valid spamming complaints will result in the immediate termination of this Agreement and forfeiture of any unpaid Commissions.
- c) Miscellaneous. Subject to the terms and conditions of this Agreement, Affiliate may promote the Affiliate Sites and the Services by (i) placing Approved Links on the Affiliate Sites, (ii) employing pay-per-click search ("PPC") search advertisements, provided that Affiliate does not use Saveology's or any Service Provider or third party's domain names, trademarks or logos in the advertisement, (iii) using permissible domain names or key word selections for search advertising, or (iv) using additional marketing vehicles including newsletters, classified advertisements, word-of-mouth, or print advertisements, provided, however, that all marketing materials and campaigns created by Affiliate shall be approved by Saveology in writing prior to implementation and must be authorized by the relevant Service Provider as specified in the Services Addendum. If allowed in the T &C's of the provider they are marketing.

**9. Intellectual Property.**

- a) Trademarks. You acknowledge that certain Saveology and/or Service Provider trademarks (registered or otherwise), service marks or trade names, including without limitation Saveology and Saveology.com (collectively, the Trademarks") may be incorporated into the Tracking Mechanisms and Content. Except as expressly set forth herein, You shall not acquire rights to the Trademarks and all goodwill now existing or hereafter created through the use of the

Approved Links and the Trademarks hereunder shall inure to the benefit of Saveology and the Service Providers. Affiliate agrees that it shall not: (i) assert any claim of ownership to the Trademarks; (ii) use, register or attempt to register with any agency or in any jurisdiction any of the Trademarks or any mark confusingly similar therewith; (iii) use, register or attempt to register any domain that includes (a) all or a portion of any Trademark, or (b) which may otherwise be confusingly similar to all or any portion of the Trademarks; or (iv) seek to purchase or register any keywords, search terms or other identifiers that include any trademark of Saveology, the Saveology Affiliates or Service Providers, or variations or misspellings thereof ("Trademarks") for use in any search engine, portal, sponsored advertising service or other search or referral service. However, nothing in this Agreement prohibits Affiliate from purchasing paid search advertisements that do not include the Trademarks. If Saveology determines, in our sole discretion, that Affiliate has violated this provision, Saveology may, without limiting any other available rights or remedies, withhold Commissions and/or terminate this Agreement.

- b) Content. Except for the limited license granted in Section 3b, Saveology and its licensors retain all right title and interest in the Content. Affiliate shall not use the Content in any manner that would direct consumers to web sites other than the Program Sites or that would promote services other than the Services. Affiliate shall not edit or materially modify the Content except as necessary to post the Content on the Affiliate Sites or marketing materials prepared in accordance with this Agreement. Affiliate shall not post or redistribute the Content to any website, such as Social Media Outlets, that requires users to sublicense or assign their rights to any content posted on the Social Media Outlet to that Social Media Outlet or any third party. Promptly upon notice from Saveology, Affiliate shall remove any Content from the Affiliate Sites and delete and otherwise destroy any Content in Affiliate's marketing materials that is no longer displayed on the Program Sites or as instructed by Saveology.
- c) Compliance with Policies. Affiliate shall strictly comply with any and all instructions from Saveology concerning the Approved Links, Content and the Trademarks, including without limitation those set forth in the Program Policies. Affiliate shall not have the right to use any logos, service marks or trademarks of any Service Provider other than the Trademarks that are contained in the Approved Links and Content, and shall only use Trademarks as part of the Approved Links and Content and not as a standalone. Saveology may, at any time and in its sole discretion, change, alter, delete, add to or otherwise modify the Trademarks, the Approved Links, and the Content.

## **10. Customers.**

As between Affiliate and Saveology, consumers who purchase Services via the Tracking Mechanisms will be deemed to be Customers of Saveology. Affiliate agrees that Saveology and the Service Providers have the right to reject any Customer order at their sole discretion and Affiliate shall not be entitled to a Commission for such rejected order. Affiliate shall not enter into any contract with, invoice or accept or collect fees from Customers or prospective Customers with respect to the Services. With regard to any Customer information made available to Affiliate by Saveology, Affiliate shall only use such Customer information in accordance with the Privacy Policy, and solely in connection with this Agreement and for no other purpose.

## **11. Affiliate Obligations.**

- a) Standard of Care. Affiliate shall use its best efforts to market, promote and sell the Services. To protect and preserve the goodwill and image of the Service Providers and Saveology, Affiliate shall: (1) conduct its activities in a manner that reflects favorably at all times on the Services and

the reputations of Saveology and the Service Providers; (2) avoid deceptive, misleading, or unethical practices that are or might be detrimental to Saveology, the Service Providers or the Services, including any disparagement of Saveology, the Service Providers or the Services; (3) make no false or misleading representations with regard to the Services; (4) refrain from publishing, posting to the Internet or employing any misleading or deceptive statements or advertising material; (5) ensure that any information provided to consumers, whether it be via the Internet, in printed materials or any other form, tangible or intangible, regarding the Services is accurate and the most recent version of said information available from Saveology or the Service Providers; and (6) refrain from making any representations, warranties, or guarantees to the public with respect to the Services that are inconsistent with the warranties or guarantees provided by the Service Providers.

- b) Compliance with Program Policies. Affiliate shall comply with all Program Policies in force during the Term, including all related guidelines, directives, rules and procedures that Saveology may post on the Saveology Site from time to time.
- c) Compliance with Applicable Laws. In performing this Agreement, Affiliate shall comply with all applicable laws, codes, directives, ordinances, rules, regulations, and other requirements now or hereafter in effect, of governmental or quasi-governmental authorities having jurisdiction over Affiliate that govern marketing via the Internet and email, including but not limited to, the CAN-SPAM Act of 2003 and all other anti-spam laws and the FTC Guidelines Concerning the Use of Testimonials and Endorsements.

## **12. Prohibited Activities.**

- a) Telemarketing. Affiliate shall not directly or indirectly engage in any telemarketing activities (including without limitation making any outbound telephone calls) whatsoever in connection with the Program. Violation of this Section will result in the immediate termination, without notice, of this Agreement, and forfeiture of any accrued Commissions.
- b) Unsuitable Sites. Affiliate shall not place the Approved Links on Unsuitable Sites. As used herein, "Unsuitable Sites" include without limitation, websites that: (i) contain sexually explicit content, (ii) promote violence, (iii) promote discrimination based on race, sex, religion, nationality, disability, sexual orientation or age, (iv) promote illegal activities, (v) include trademarks or trade names of Saveology or Service Providers, or variations or misspellings of such trademarks or trade names in the website URL, or (v) violate the intellectual property or other rights of a third party.
- c) Unauthorized Rebates, Discounts and Warranties. Affiliate shall not (i) directly or indirectly offer any consideration or incentive (including without limitation payment of money or rebates), discount or other benefit to any person or entity for ordering Services using the Tracking Mechanisms (ii) read, intercept, record, redirect, interpret or fill in the contents of any electronic form or other materials submitted to Saveology by any person or entity; (iii) take any action that could reasonably cause any consumer confusion as to the relationship between Saveology and Affiliate or the Affiliate Sites and Program Sites; or (iv) attempt to circumvent the Commission Schedule or artificially increase Commissions. Affiliate shall not make any promises, representations or warranties with respect to the Services other than those expressly set forth in the Content or on the Program Sites.
- d) Abuse of Program Sites and Saveology Computer Network. Affiliate shall not use or attempt to use any Program Site with the intent to interrupt, disrupt, damage, disable, overburden, or impair that Program Site or any other Program Site, or interfere with any person's use and enjoyment of any Program Site, including without limitation (i) sending mass unsolicited email messages, (ii)



flooding servers with requests, or (iii) the use of spyware or similar programs that materially interfere with the Program Sites. Affiliate shall not attempt to gain access to the computer systems of Saveology or any third party through the Program Sites or the SaveologyNetwork Proprietary On-Line Tracking System. Affiliate shall not engage in “spidering,” “screenscraping,” “database scraping,” harvesting of email addresses, wireless addresses or other contact or personal information, or any other automatic means of obtaining lists of information from or through the Program Sites, including without limitation any information residing on any server or database connected to the Program Sites.

- e) Affiliate Site(s). Affiliate shall not include on the Affiliate Sites or otherwise use in connection with the Tracking Mechanisms and the Content any malware, spyware, virus, worm, Trojan horse or other harmful or malicious code that may be unknowingly downloaded by users or installed on their computers when they visit Affiliate Sites. Affiliate shall not frame any Program Site or a portion thereof within any Affiliate Site.
- f) Affiliate shall not implement “black hat” search engine optimization tactics that degrade the relevance of web search results on search engines, including, without limitation, keyword stuffing, hidden text and links, doorway and cloaked pages, and link farming;

### **13. Term and Termination.**

- a) The term of this Agreement (“Term”) shall be one (1) year commencing on the Approval date and will automatically renew for successive one (1) year periods unless terminated by either party. Either party may terminate this Agreement at any time, with or without cause, by giving the other party written notice of termination. Upon the termination or expiration of this Agreement, Affiliate shall immediately cease all marketing and promotion of the Services, discontinue all use of the Trademarks, delete all Tracking Mechanisms and Content from the Affiliate Site(s), disable all Approved Links and destroy all marketing materials that contain the Approved Links or Content. Additionally at Saveology’s option, Affiliate shall return to Saveology or destroy all materials in printed or electronic form, including any and all notes, documents and physical or electronic copies derived therefrom pertaining to Saveology and the Program that contain Confidential Information, as defined below. Upon Saveology’s request, an authorized representative of Affiliate shall certify in writing that Affiliate has complied with its obligations under this Section 13.
- b) Post-Termination Commissions. Except as otherwise set forth herein, Affiliate shall be entitled to Commissions on Orders installed and/or completed during the Term subject to the provisions of Section 6.

### **14. Confidential Information.**

Affiliate will maintain, in confidence, any non-public provisions of this Agreement, including the Commission Schedules, Program Policies, and all data, summaries, reports, communications or information of all kinds, whether oral or written, pertaining to the Program and this Agreement, including without limitation any Customer lists and nonpublic personal Customer information that Saveology may provide to Affiliate (“Confidential Information”). Affiliate agrees that it shall not disclose any Confidential Information or use such information other than to exercise its rights or perform its obligations hereunder and shall use the same degree of care, and in no event less than reasonable care, to protect the Confidential Information as it uses to protect its own information of like character and importance. Affiliate shall not disclose the Confidential Information to any persons except: (i) at the written direction of Saveology; or (ii) to the extent necessary to comply with any applicable laws, the valid order of a court of competent jurisdiction or the valid order or requirement of a governmental agency or any successor agency thereto, in which event Affiliate shall notify

Saveology in writing of the information prior to making any disclosure, and shall seek confidential treatment of such information. Affiliate agrees that any breach or default of any of its obligations set forth in this Section 14 will cause substantial and irreparable harm and injury to Saveology for which monetary damages alone would be an inadequate remedy, and which damages are difficult to accurately measure. Accordingly, Affiliate agrees that Saveology shall have the right, in addition to (and without limitation of) any other rights and remedies available to Saveology at law, in equity, under contract or otherwise, to obtain immediate injunctive relief (without the necessity of posting or filing a bond or other security) to restrain the threatened or actual violation hereof as well as any other equitable relief allowed by the federal or state courts. The provisions of this Section 14 shall survive termination of this Agreement indefinitely.

#### **15. Disclaimer; Limitation of Liability.**

- a) Saveology makes no express or implied warranties or representations with respect to the Program, the Program Sites, the Content, the Tracking Mechanisms, the Trademarks or the Services (including without limitation, warranties of fitness, merchantability, non-infringement, or any implied warranties arising out of course of performance, dealing or trade usage). Saveology makes no representation that the operation of the Program Sites or the Tracking Mechanisms will be uninterrupted or error-free, and will not be liable for the consequences of any errors or interruptions.
- b) NEITHER SAVEOLOGY NOR THE SERVICE PROVIDERS WILL BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL OR EXEMPLARY DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE PROGRAM SITES, TRACKING MECHANISMS, CONTENT OR THE SERVICES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF BUSINESS PROFITS OR GOODWILL, BUSINESS INTERRUPTION, OR LOST DATA IN ANY MANNER, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT TO THE EXTENT THAT LIABILITY ARISES FROM A BREACH OF THE CONFIDENTIALITY OBLIGATIONS SET FORTH IN SECTION 14 HEREOF, THE CUMULATIVE LIABILITY OF EITHER PARTY WILL NOT EXCEED THE AMOUNT OF COMMISSIONS THAT AFFILIATE HAS RECEIVED UNDER THIS AGREEMENT DURING THE TWELVE MONTHS PRECEDING THE DATE THE CAUSE OF ACTION ARISES OR SHOULD REASONABLY HAVE BEEN DISCOVERED.

#### **16. Representations and Warranties.**

Each party represents and warrants to the other that: (i) it is duly organized and validly existing under applicable laws; (ii) this Agreement constitutes a legal, valid and binding obligation, enforceable against that party in accordance with its terms; and (iii) neither the execution, delivery or performance of this Agreement, will, directly or indirectly (with or without notice or lapse of time) breach any provision of that party's governing documents, any resolution adopted by its equity holders or governing bodies, or violate, breach, or cause a default under any contract, instrument, or order to which it is a party or by which it is bound.

#### **17. Indemnification.**

Affiliate shall defend, indemnify and hold harmless Saveology, the Saveology Network, the Service Providers, their respective affiliates and licensors, and any officers, directors, employees, agents or representatives of the foregoing, from and against all third party claims, costs, liabilities, judgments,

expenses, and damages (including amounts paid in settlement and reasonable attorneys' fees) that result, directly or indirectly, from: (i) Affiliate's breach of any of the terms of this Agreement; (ii) Affiliate's misrepresentation, fraud or negligence; (iii) any re-characterization of Affiliate employees as employees of Saveology or a Service Provider, including but not limited to any liability for premiums, contributions or taxes payable to any workers' compensation, unemployment compensation, disability benefit or tax withholding; (iv) any amounts including, without limitation, taxes, interests and penalties assessed against Saveology that are obligations of Affiliate; (v) the Affiliate Site(s); and (vi) any use by Affiliate of the Content, Approved Links, Tracking Mechanisms or other marketing materials and activities by Affiliate hereunder.

## **18. Governing Law and Dispute Resolution.**

- a) Governing Law & Interpretation. This Agreement shall be construed and enforced under the substantive laws of the State of Florida without regard to conflicts of law principles.
- b) Dispute Resolution. In the event of any dispute or claim arising from or relating to this agreement, or the breach or termination thereof ("Dispute"), the parties hereto shall use their best efforts to negotiate in a good faith attempt to settle the Dispute within fifteen days of written notice of such Dispute. If the parties do not reach a solution through negotiation, then, upon notice by either party to the other, all Disputes shall be determined by arbitration in Ft. Lauderdale, Florida, before a sole impartial arbitrator. The arbitration shall be administered by the AAA pursuant to its Commercial Rules and the arbitrator shall be selected pursuant to the rules and procedures of the AAA. The decision of the arbitrator shall be final and non-appealable. Judgment on the award may be entered in any court having competent jurisdiction.
- c) Continued Performance during Arbitration. Pending the submission to arbitration and thereafter until the arbitrator renders its award or decision, the parties shall, except in the event of termination of this Agreement, continue to perform their obligations under this Agreement. All costs of arbitration (including, without limitation, those incurred in the appointment of the arbitrator) shall be apportioned in the arbitral award.

## **19. Miscellaneous.**

- a) Force Majeure. Neither party shall be liable for any failure to perform any of its respective obligations under this Agreement when such failure is caused by or results from any event beyond the control of that party; provided, that (a) the party who has suffered a force majeure event shall (1) immediately notify the other party of the occurrence and nature of such event and (2) use commercially reasonable efforts to continue performing its obligations under this Agreement.
- b) Notices. Any notice or other communication under this Agreement shall be in writing and shall be considered given when delivered personally, mailed by registered or certified mail, return receipt requested, delivered by overnight courier or faxed or sent via email (with confirmation receipt report) to the parties at the addresses specified in the Application.
- c) Entire Agreement. This Agreement, together with the Application, the Services Addendum, any Program Policies communicated to Affiliate by Saveology and any modifications, exhibits or schedules hereto, contains the entire agreement between the parties and supersedes any prior or inconsistent agreements, negotiations, representations and promises, written or oral between the parties respecting the subject matter hereof.

- d) Modifications. Saveology reserves the right to modify the terms and conditions of this Agreement at any time in its sole discretion. Affiliate will be notified of any changes by email or via a change notice or new agreement posted on the Program website. This Agreement shall be deemed to have been amended as of the date of such email or posting on the Saveologynetwork.com website. YOU WILL BE ASKED TO ACCEPT ALL MODIFICATIONS TO THIS AGREEMENT THE FIRST TIME YOU SIGN ON TO THE PROGRAM SITE AFTER SUCH MODIFICATION WAS MADE. IF ANY MODIFICATION IS UNACCEPTABLE TO YOU, YOUR SOLE RECOURSE IS TO TERMINATE THIS AGREEMENT. Your continued participation in the Program after notice of modification of any of the terms and conditions of this Agreement shall constitute Your binding acceptance to such modification(s).
- e) Waiver. The failure of a party to insist upon strict adherence to any of the terms of this Agreement on any occasion shall not be considered a waiver or deprive that party of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement. Any waiver must be in writing.
- f) Sub-Affiliates. Affiliate may engage contractors, consultants or other agents ("Sub-Affiliates") to exercise its rights and obligations under this Agreement, solely upon the prior written consent of Saveology and provided that such Sub-Affiliates are party to a written Agreement with Affiliate on terms and conditions no less restrictive than those set forth herein. Affiliate shall be fully responsible for all acts and omissions of the Sub-Affiliates and shall indemnify and hold Saveology harmless from any and all liabilities, claims and losses of any kind or nature (including but not limited to reasonable attorney's fees and costs) arising from or in connection with the actions of any Sub-Affiliate whether such Sub-Affiliate has been approved by Saveology or the actions of such Sub-Affiliate are known to or approved by Saveology.
- g) Assignment. This Agreement is binding upon the heirs, legal representatives and successors of the parties. This Agreement may not be assigned by either party, except that Saveology may assign this Agreement to any Saveology Affiliate, in whole or in part at any time in its sole discretion. Any attempted transfer, delegation or assignment in violation of the provisions of this Section 20f will be void and this Agreement shall automatically terminate.
- h) Relationship of the Parties. The parties are and shall be, with respect to the subject matter of this Agreement, independent contractors of one another and nothing herein shall be deemed to create an agency, partnership, employment, or joint venture relationship between the parties. Nothing in this Agreement precludes Saveology from retaining the services of other persons or entities undertaking the same or similar services as those undertaken by Affiliate hereunder.
- i) Non-Solicitation of Saveology's Employees and Contractors. During the term of this Agreement and for one (1) year following termination, Affiliate shall not solicit, hire, retain as an employee or independent contractor, or use in any other capacity, any employee or contractor or former employee or contractor of Saveology without Saveology's prior written consent.
- j) Construction; Severability. In the event that any provision of this Agreement conflicts with the law under which this Agreement is to be construed or if any such provision is held invalid by a court with jurisdiction over the parties to this Agreement, (a) such provision shall be deemed to be restated to reflect as nearly as possible the original intentions of the parties in accordance with applicable law, and (b) the remaining terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect.

- k) Interpretation. This Agreement shall be deemed a mutual agreement and shall not be construed and/or interpreted in favor or against either party on the basis of preparation of the Agreement.
- l) Remedies Cumulative. The rights and remedies herein provided to Saveology in case of default or breach of this Agreement by Affiliate are cumulative and without prejudice to any other rights or remedies that Saveology may have by reason of such default or breach by Affiliate at law, in equity, under contract or otherwise (all of which are hereby expressly reserved).
- m) Consent to Receive Communications. You acknowledge that this Agreement serves as Your express written consent to receive e-mail, facsimile or other communications from Saveology and including without limitation, communications that contain unsolicited advertisements. This written consent shall include (without limitation) all such communications regulated by future Federal Communications Commission action.
- n) Public Statements. You agree that Saveology may identify You as a participant in the Program for as long as You participate in the Program. Saveology may make this identification orally, in writing or electronically, including without limitation, in press releases, public announcements and promotional materials, publicizing, advertising or promoting the Program. Affiliate shall not issue any press releases or public announcements or otherwise make any public communications regarding its participation in the Program without Saveology's prior written consent.
- o) Survival. Following the termination of this Agreement, the parties shall remain obligated under all provisions of this Agreement which by their terms continue after the termination of this Agreement or are incidental to the performance of the obligations under such provisions, including, without limitation, Sections 6, 7b, 14, 15, 16 and 17.

## **20. INDEPENDENT INVESTIGATION.**

YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT AND AGREE TO ALL ITS TERMS AND CONDITIONS. YOU UNDERSTAND THAT WE MAY AT ANY TIME (DIRECTLY OR INDIRECTLY) SOLICIT CUSTOMERS FOR THE SERVICES ON TERMS THAT MAY DIFFER FROM THOSE CONTAINED IN THIS AGREEMENT OR OPERATE WEBSITES THAT ARE SIMILAR TO THE AFFILIATE WEBSITE. YOU HAVE INDEPENDENTLY EVALUATED THE DESIRABILITY OF PARTICIPATING IN THE PROGRAM AND ARE NOT RELYING ON ANY REPRESENTATION, GUARANTEE OR STATEMENT OTHER THAN AS SET FORTH IN THIS AGREEMENT.